

154

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

SYNAGRO TECHNOLOGIES,)	CIVIL NO. CV04-00509SPK LEK
INC.,)	
)	
Plaintiff,)	
)	
vs.)	
)	
GMP HAWAII, INC.,)	
)	
Defendant.)	
)	

CONTINUED DEPOSITION OF PETER MELNYK, Ph.D., P.E.

Taken on behalf of the Plaintiff SYNAGRO TECHNOLOGIES, INC., at the law offices of Alston, Hunt, Floyd & Ing, 1001 Bishop Street, Suite 1800, American Savings Bank Tower, Honolulu, Hawaii 96813, commencing at 11:10 a.m., on Wednesday, October 5, 2005 pursuant to Notice.

BEFORE: MYRLA R. SEGAWA, CSR No. 397
Notary Public, State of Hawaii

EXHIBIT N

RALPH ROSENBERG COURT REPORTERS, INC.
Honolulu, HI (808) 524-2090

155

1 APPEARANCES:

2 For Plaintiff SYNAGRO TECHNOLOGIES, INC.:

3 MEI-FEI KUO, ESQ.
4 Alston, Hunt, Floyd & Ing
5 American Savings Bank, Suite 1800
6 1001 Bishop Street
7 Honolulu, Hawaii 96813

8 For Defendant GMP HAWAII, INC.:

9 RICHARD C. SUTTON, JR., ESQ.
10 Sakai, Iwanaga, Sutton Law Group
11 City Financial Tower, Suite 2307
12 201 Merchant Street
13 Honolulu, Hawaii 9681314 Also present: DANIEL HABIB
15
16
17
18
19
20
21
22
23
24
25

RALPH ROSENBERG COURT REPORTERS, INC.
Honolulu, HI (808) 524-2090

175

1 counterclaim is attached to your formal deposition
2 exhibit. It's Exhibit 3.

3 MR. SUTTON: I have a copy here.

4 MS. KUO: You have a copy, okay.

5 BY MS. KUO:

6 Q I discussed this very brief with
7 Mr. Guirguis, but I wanted to ask you the same thing
8 because he had said you had more information on
9 engineering design work. And specifically my
10 question related to paragraph -- let me see if I can
11 find it. Paragraph 12 on page 4.

12 MR. SUTTON: I want him to get
13 familiar with the whole thing.

14 BY MS. KUO:

15 Q Just take your time and review it, if you
16 want.

17 A I read paragraph 12.

18 Q My question is right here on paragraph 12
19 it says quote, "The total of the design expenses is
20 approximately \$2,683,422 for the said contract." Do
21 you see that?

22 A Uh-huh.

23 Q Said contract you're talking about the
24 implied contract?

25 MR. SUTTON: Well, let me object to

176

1 the form of the question. But see, what this section
2 is called breach of implied contract, and so that's
3 the reference you're making is that this is -- do you
4 understand what she's asking at this point? Perhaps
5 you might clarify again.

6 BY MS. KUO:

7 Q My question is this \$2 million figure, is
8 this what GMP's claiming is the design expenses
9 damages and pursuant to their implied contract?

10 A Well, I think my interpretation -- and I
11 didn't write this -- my interpretation refers to the
12 total design expenses for the project.

13 Q And Mr. Guirguis testified previously that
14 this -- do you know where this figure is based upon
15 before I --

16 A Which figure?

17 Q The \$2 million figure.

18 MR. SUTTON: I think it may be helpful
19 to make reference to the contract, the cost breakdown
20 to see if that's what it says.

21 THE WITNESS: Repeat the question.

22 BY MS. KUO:

23 Q Do you have an understanding of where this
24 figure comes from, the \$2 million?

25 A Not really. I mean, I didn't prepare this.

177

1 So I can't testify where it came from.

2 Q Okay. However, you did previously testify
3 that your understanding that this is based upon the
4 engineering design expenses for the whole project,
5 correct?

6 A Correct.

7 Q That would include work that Andritz and
8 CBI, the engineering design work that Andritz and CBI
9 would be doing on the project as well?

10 A In our understanding as the consulting
11 engineering firm, no.

12 Q No?

13 A No.

14 Q And why is that?

15 A Because typically the engineering expenses
16 from the equipment manufacturer are included in the
17 cost of the equipment.

18 Q I don't think I quite understand. Can you
19 explain what that means, the equipment?

20 A Well, Andritz essentially is the
21 manufacturer and they provide a sludge drier which is
22 actually very complicated. It's actually a system.
23 It's more than one piece of equipment. Typically
24 their design expenses are included in the equipment
25 cost, the price of the equipment.

178

1 Q So you're saying or your understanding
2 would be their design cost would be under equipment
3 cost references the engineering design cost?

4 A Yes.

5 Q And what is that understanding based upon,
6 just general practice?

7 A Yes.

8 Q What about with respect to CBI's work on
9 the project, is their engineering design cost
10 encompassed in this \$2 million figure?

11 A I do not believe so, no.

12 Q And why is that your understanding as well?

13 A For the same explanation that I gave for
14 Andritz that the cost for the digester included their
15 design expenses.

16 Q I do want to show you this document here.

17 A And also --

18 Q I'm sorry. Go ahead.

19 A I'd also like to add that they're selling
20 the same equipment to a number of different clients
21 so that a lot of their design costs are prorated, you
22 know, over various clients.

23 Q What about the engineer and design work
24 that GMP was contracted to perform for Andritz and
25 CBI, is that engineering design work cost encompassed

179

1 in the \$2 million figure?

2 A Yes.

3 Q Okay. And I want to show you next what's
4 marked as Exhibit 15 to your prior deposition.

5 A Uh-huh.

6 Q Mr. Wagdy Guirguis -- and I'm going to say
7 the full name so that we can get it clarified for the
8 record -- had testified that the \$2 million figure
9 was based on Exhibit 1.

10 A Exhibit?

11 Q One.

12 MR. SUTTON: You mean attached to the
13 letter?

14 MS. KUO: Yes.

15 MR. SUTTON: Okay.

16 BY MS. KUO:

17 Q Now, Mr. Wagdy Guirguis believed that -- he
18 believed the \$2 million figure came from the design
19 expenses adjusted price. Do you see that figure?

20 A Yes.

21 Q Do you know who created this document?

22 A Synagro created this document.

23 Q This \$2 million figure is that Synagro's
24 figure?

25 A That is correct.

180

1 Q Did GMP have any involvement in providing
2 this figure to Synagro?

3 A Yes.

4 Q And what involvement was that?

5 A This would have been the price proposal
6 that I gave to Steve Huff in June of 2001, and then
7 of course then subsequent proposals that I would have
8 given to both Andritz and CBI.

9 Q Okay. Now, when you talk about the
10 proposals, is this a proposal you're talking about?
11 And I'm referencing Exhibit 7 of Wagdy Guirguis's
12 deposition. It's a June 1, 2001 letter.

13 A What is the question?

14 Q You previously stated that Synagro obtained
15 this figure -- I'm sorry. You previously testified
16 that this figure had arose from GMP was involved in
17 coming up with this figure in helping Synagro come up
18 with this figure; is that correct?

19 A Correct.

20 Q And then you mentioned -- I asked you what
21 was that based upon and you said a proposal that you
22 submitted to Steve Huff. So is this exhibit proposal
23 the one you're referring to?

24 A Yes. Well, I would like to clarify is that
25 if you look at the exhibit, there are three -- four

293

C E R T I F I C A T E

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)


I, MYRLA R. SEGAWA, Notary Public, State of
Hawaii, do hereby certify:

That on Wednesday, October 5, 2005, 2005,
at 11:10 a.m., appeared before me PETER MELNYK, the
witness whose deposition is contained herein; that
prior to being examined he was by me duly sworn;

That the deposition was taken down by me in
machine shorthand and was thereafter reduced to
typewriting under my supervision; that the foregoing
represents, to the best of my ability, a true and
correct transcript of the proceedings had in the
foregoing matter.

I further certify that I am not an attorney
for any of the parties hereto, nor in any way
concerned with the cause.

DATED this 12th day of October, 2005, in
Honolulu, Hawaii.


MYRLA R. SEGAWA, CSR NO. 397
Notary Public, State of Hawaii
My Commission Exp: 1-27-2009

RALPH ROSENBERG COURT REPORTERS, INC.
Honolulu, HI (808) 524-2090